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## **Victory! Congress passes reform legislation based on *Inside the Equal Access to Justice Act!***

Lowell E. Baier's book *Inside the Equal Access to Justice Act: Environmental Litigation and the Crippling Battle over America's Lands, Endangered Species, and Critical Habitats* was published in late 2015, when legislative battles over reforming the Equal Access to Justice Act (EAJA) had been ongoing for several years. Many of those battles are described in the book, and it recommends two critical amendments to EAJA: restoring reporting of attorneys' fees awards under EAJA, which had been terminated in 1995, and restricting the use of the law by large, wealthy non-profit corporations that are outside the law's intended beneficiaries.

After the book was published, the push for reform continued, with a focus on the need for accurate reporting of EAJA awards. Much of this was due to *Inside the Equal Access to Justice Act* and other advocacy by Baier, such as published papers and op-eds, and testimony before the House Judiciary Committee's Subcommittee on Courts, Commercial and Administrative Law. Through the leadership of Representative Cynthia Lummis (R-WY) and after her retirement Representative Doug Collins (R-GA), legislation restoring reporting passed the United States House of Representatives in 2012, 2014, 2015, 2017, and 2019. Despite sponsorship and strong support by Senator John Barrasso (R-WY), Senate action proved elusive until 2019. The EAJA reporting legislation finally passed the Senate as part of the 2019 John D. Dingell, Jr. Conservation, Management, and Recreation Act (Public Law 116-9), becoming law. On the House floor, long-time cosponsor of the legislation Steve Cohen (D-TN) recognized both *Inside the Equal Access to Justice Act* and Baier's "great support" as instrumental.

Under this legislation, the Administrative Conference of the United States must produce a report every March that provides a comprehensive description of payments made under EAJA, including those made through judicial settlements. In addition, Congress directed the creation of an online database of payments that includes each payment, the agency making the payment, the case or matter in which the payment was made, the date and amount of the payment, the recipient of the payment, a description of the claims in the case, and the basis for the finding that the government's legal position was not substantially justified. The first annual report and accompanying database, covering fiscal year 2019, were published on March 30, 2020, and are available to the public at <https://www.acus.gov/eaja/background>.

In 2019, a total of 8,334 EAJA awards were made, totaling \$58,779,452.84. 8,223 of these were paid by the Social Security Administration, and the average award in these cases was \$5,547.76. In contrast, while just 22 awards were paid by the Department of the Interior, the average payment in those cases was \$162,149.07. Clearly, the work of EAJA reform is not yet finished. The disparity in these numbers, where the vast majority of payments are small awards to individuals with nowhere else to turn and in contrast, a few large environmental cases consume disproportionate resources, paid to litigants who do not need the money, shows that the situation documented by *Inside the Equal Access to Justice Act* in 2015 persists today. Through this legislation, America has addressed the first, critical issue with EAJA, the lack of any transparency since reporting was eliminated in 1995. Now, at last, we have a comprehensive picture of who is using EAJA and under what circumstances.

Now that the American people can see which organizations are abusing this law, the next step is to reform the law and narrow EAJA so that its use is limited to the small businesses, veterans, social security beneficiaries, and other individuals for which it was originally intended, and who have nowhere else to turn in order to secure legal representation.